IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.741/Mum./2022
(Assessment Year : 2017–18)

M/s. Celio Future Fashion Pvt. Ltd.
Unit no.301–302, Lotus Corporate Park
Goregaon, Mumbai 400 099 ……. Appellant
PAN – AADCC3844J

v/s

Addl. Commissioner of Income Tax
National Faceless Appeal Centre, Delhi ……. Respondent

Assessee by : Shri Sumant Chadha
Revenue by : Shri Pravin Salunkhe

Date of Hearing – 26/07/2023	Date of Order – 08/09/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned final assessment order dated 24/02/2022, passed under section 143(3) read with section 144C(13) and section 144B of the Income Tax Act, 1961 (*"the Act"*), pursuant to the directions dated 27/01/2022, issued by the learned Commissioner of Income Tax (DRP–1), Mumbai–1, [*"learned DRP"*], under section 144C(5) of the Act for the assessment year 2017–18.

2. In its appeal, the assessee has raised the following grounds:–

> *"1.* ***Adjustment of Rs. 35,32,063 to Arm Length Price (ALP) under section 92C of the Income Tax Act, 1961 (The Act)-Tax effect Rs.11,67,806.***
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> *That on the facts and circumstances of the case, learned Assessing Officer (National Faceless Assessment Centre) and Dispute Resolution Panel (DRP) has erred both in law as well on facts in making adjustment*

of Rs. 35,32,063, towards ALP of Import of men's wear for resale made by the Appellant from its Associated Enterprises (AE), based on the observation of Transfer Pricing Officer (TPO) under section 920 of the Act by applying external Transaction Net Margin Method (TNMM).

1.1. Ld. DRP/AO has erred in rejecting Retail Sales Price (RPM) method adopted by the Appellant as the most appropriate method for justifying ALP and ignored the fact that the appellant is engaged in trading and distribution activities without any value addition to products.

1.2. Ld. DRP/AO has erred in law and facts of the case while rejecting foreign AE as tested party without considering that the tested party was selected by the appellant post analysis of functions performed, risk borne and assets used by the appellant and tested party.

Without prejudice to above grounds,

1.3. Ld. DRP/AO has erred in law and facts of the case while applying external TNMM as the most appropriate method for benchmarking import of men's wear transaction with AE instead of internal TNMM.

Hence, Appeal.

2. Treating loans and advances given as unexplained and taxing the same as income under section 115BBE of the Act- Rs. 1,31,02,653 - Tax effect Rs. 86,64,260.

That on the facts and circumstances of the case, Id. AO has erred both in law as well as on facts by treating increase in loans and advances of Rs 1,31,02,653 during AY 2017-18 as unexplained expenditure under section 69C of the Act.

2.1. Ld. AO erred in facts of the case by alleging that appellant has not submitted supporting details with explanations and reconciliation without appreciating the submission of the appellant wherein signed rental agreements, extract of relevant bank accounts highlighting the payment made and reconciliation with books of accounts was submitted.

2.2. Ld. AO erred in law and facts of the case while making addition under section 69C of the Act treating the Jeans and advances given as unexplained expenditure without appreciating the fact that the amount is not in nature of expenditure and are assets of the company.

2.3. Ld. AO erred in law and facts of the case by treating the amount paid towards security deposit as unexplained expenditure while rental payments of rent to same parties is allowed and considered genuine.

2.4. Ld. DRP has erred in law and facts of the case by delegating its power to Id. AO of making further +verification / enquiry, which is prohibited by section 144C(8) of the Act. Ld. DRP has further erred by directing ld. AO to conduct verification, despite the fact that additional evidences were sent to Id. AO during the course of proceedings before DRP and no reply was received by ld. AO on the same.

Hence, Appeal.

3. Treating outstanding balance of sundry creditors as unexplained and taxing the same as income under section 115BBE of the Act - Rs. 8,04,10,641-Tax effect Rs. 5,31,72,340.

That on the facts and circumstances of the case, Id. AO has erred both in law as well as on facts by treating outstanding creditors of Rs.8,04,10,641 from total outstanding creditors of Rs. 15,46,19,525 as on 31.03.2017 as unexplained expenditure under section 69C of the Act.

3.1. Ld. AO has failed to appreciate that purchases recorded in the books have been not been disputed as "unexplained and accordingly, the creditors for the said purchases cannot be considered as unexplained.

3.2. Ld. AO has erred in law by not appreciating that additional evidence in form of confirmation for sundry creditors as on 31.03.2017 were provided on sample basis, which was perused and accepted by Hon'ble DRP. Ld. AO has not followed specific directions provided by Hon'ble DRP for verification of additional evidence, exceeding its authority and has therefore erred in law while treating balance creditors of Rs. 8.04 crores as unexplained expenditure u/s 69C of the Act.

3.3. Ld. AO has erred in law by treating accrued expense, creditors of expenses and creditors below 5 lakhs as unexplained expenditure for want of supporting evidences, exceeding the directions provided by Hon'ble DRP.

3.4. Ld. AO has erred in law and in facts by treating accrued expense as 'unexplained expenditure' alleging that genuineness and creditworthiness of the same was not proved, without appreciating that accrued expenses represents provision for expenses and does not involve actual payment or credit.

3.5. Ld. DRP has erred in law and facts of the case by delegating its power to Id. AO of making further verification / enquiry, which is prohibited by section 144C(8) of the Act. Ld. DRP has further erred by directing ld. AO to conduct verification, despite the fact that additional evidences were sent to Id. AO during the course of proceedings before DRP and no reply was received by Id. AO on the same.

Without prejudice to above grounds,

3.6. Ld. AO has erred in law and in facts by making impugned addition of Rs. 8.04 crores as unexplained expenditure under section 69C of the Act, without appreciating that the amount represents closing balance as on 31.03.2017 and the corresponding expense incurred during the year have been not disputed and allowed by ld. AQ.

Hence, Appeal.

4. That on the facts and under the circumstances of the case, the ld. AO has erred both on the law as well as facts in initiating penalty proceeding under section 270A and 271AAC(1) of the Act.

5. The appellant craves leave to add, alter, delete, rectify and modify any of the grounds of appeals before or at the time of hearing the appeal.

3. The issue arising in ground no.1, raised in assessee's appeal, is pertaining to transfer pricing adjustment in respect of international transaction of '*import of men's wear for resale*'.

4. The brief facts of the case returning to this issue, as emanating from the record, are: The assessee is a company and is engaged in the business of trading in ready-made garments and accessories under the name and style of "*Celio*". For the year under consideration, the assessee filed its return of income on 28/11/2017, declaring a total loss of Rs.26,58,77,636. The return filed by the assessee was selected for scrutiny under CASS and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was noticed that the assessee has entered into international transactions with its associated enterprises. Accordingly, a reference under section 92CA(1) of the Act was made to the Transfer Pricing Officer ("*TPO*") for computation of arm's length price in relation to international transactions as reported in Form No.3CEB, filed by the assessee. During the year under consideration, the assessee, inter-alia, entered into an international transaction pertaining to '*import of men's wear for resale*' with its associated enterprise. The assessee purchased finished goods (men's wear) from its associated enterprise for the purpose of stock and sale in the domestic market. For benchmarking the said international transaction, the assessee applied Resale Price Method ("*RSM*") as most appropriate method. The TPO vide order dated 05/01/2021, passed under section 92CA(3) of the Act rejected the benchmarking analysis conducted by the assessee and applied Transactional Net Margin Method ("*TNMM*") as the most appropriate method and computed the transfer pricing adjustment of Rs.1,02,73,426, in respect of international transaction pertaining to '*import of men's wear for resale'* by considering assessee as the tested party. The learned DRP vide its directions, inter-alia, rejected the objections filed by the assessee following its directions rendered in assessee's own case for the assessment year 2011-12, wherein TNMM was held to be the

most appropriate method to benchmark the international transaction of purchase of finished goods from associated enterprise. In conformity with the directions issued by the learned DRP, the Assessing Officer ("*AO*") passed the impugned final assessment order. Being aggrieved, the assessee is in appeal before us.

5. Having considered the submissions of both sides and perused the material available on record, we find that the coordinate bench of the Tribunal in assessee's own case in M/s.Celio Future Fashion Private Limited v/s ACIT, in ITA No.1928/Mum./2016, for the assessment year 2011-12, vide order dated 15/03/2019, while deciding a similar issue held that RPM is the most appropriate method for benchmarking the international transaction of '*import of men's wear for resale*'. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as under:-

> *"7.3. We have heard the parties on this issue and perused the record. Admittedly, the assessee is a mere distributor of men's wear, imported from its AE. In the following cases, it has been held that Re-sale Price Method is the most appropriate method to benchmark the international transactions when finished goods are purchased by the assessee from its AE, which are ready to be sold in the market without any value addition:*
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> *i. Fujitsu India (P) Ltd., Vs. ACIT [101 taxmann.com 322] (Delhi-Trib);*
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> *ii. Burberry India Pvt. Ltd., Vs. ACIT in ITA Nos. 758 & 7684/Del/2017, dt. 22-06-2018;*
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> *iii. Bose Corporation India (P) Ltd., Vs. ACIT [77 taxmann.com 194] (Delhi-Trib);*
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> *iv. CIT Vs. L'Oreal India (P) Ltd., [53 taxmann.com 432] (Bombay);*
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> *7.3.i. For the sake of convenience, we extract below the operative portion of the order passed by the Delhi Bench of this Tribunal in the case of Burberry India Pvt. Ltd., Vs. ACIT in ITA Nos. 758 & 7684/Del/2017, dt. 22-06-2018:*
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> > *"15. We have gone through the record in the light of the submissions on either side. It is an admitted fact that in this case the assessee is merely purchasing and selling the products without adding any value to the core product. Further, Ld. TPO did not dispute the characterisation of the assessee as in the TP document and also accepted the functional profile of the assessee as a routine distributor. Ld. DRP, however, recorded that the assessee has incurred substantial AMP, and other expenses, in relation to its turnover, and is therefore, not a simple distributor in terms of the requirement of using RPM. Now we shall proceed to examine the law applicable these facts.*

16. In Nokia India (P) Ltd. v. Dy. CIT[2014] 52 taxmann.com 492/153 ITD 508 (Delhi), the Delhi bench of the ITAT held that,-

9. Sub-clause (i) of clause (b) of Rule 10B(1) deals with identifying the price at which the goods purchased from an AE is resold. Sub-clause (ii) of clause (b) of Rule 10B(1) talks of reducing the amount of normal gross profit margin of comparable uncontrolled transactions from such resale price of the assessee. Sub-clause (iii) states that the result of subclause (ii) is further reduced by the expenses incurred in connection with the purchase of goods and sub-clause (iv) provides that the amount so deduced under sub-clause (iii) is adjusted on account of differences in the international transaction and comparable uncontrolled transactions which materially affect the amount of gross profit margin in the open market. Finally, sub-clause (v) provides that the adjusted price found under sub-clause (iv) is taken as arm's length price in respect of purchase of goods from the AE. When we consider the methodology given under RPM, more specifically sub-clauses (i) and (v), it becomes patent that sub-clause (i) refers to 'property purchased by the enterprise ... is resold ' and sub-clause (v) refers to 'arm's length price in respect of the purchase of the property ... by the enterprise '. A close scrutiny of the above two sub-clauses along with the remaining sub-clauses of rule 10B(1)(b) makes it clear beyond doubt that RPM is best suited for determining ALP of an international transaction in the nature of purchase of from an AE which are resold as such to unrelated parties. Ordinarily, this method pre-supposes no or insignificant value addition to the goods purchased from foreign AE.

17. While noting the above decision also, Hon'ble jurisdictional High Court, in Principal Commissioner of Income-tax-6 v. Matrix Cellular International Services (P.) Ltd. [2018] 90 taxmann.com 54 (Delhi) found that, -

8. This Court finds that once the ITAT, on considering the relevant facts as well as the order of the TPO, had concluded that the business of the assessee was merely that of a pure trader, and there was no value addition made before reselling the particular products (i.e. the SIM cards), its consequent finding that RPM is the Most Appropriate Method, is irreproachable. In Nokia India (P) Ltd. v. Deputy Commissioner of Income Tax, (2015) 167 TTJ (Del) 243, the Delhi bench of the ITAT held:

"A close scrutiny of the above two sub-clauses along with the remaining sub-clauses of r. 10B(1)(b) makes it clear beyond doubt that RPM is best suited for determining ALP of an international transaction in the nature of purchase of goods from an AE which are resold as such to unrelated parties. Ordinarily, this method presupposes no or insignificant value addition to the goods purchased from foreign AE. In a case the goods so purchased are used either as raw material for manufacturing finished products or are further subjected to processing before resale, then RPM cannot be characterized as a proper method for benchmarking the international transaction of purchase of goods by the Indian enterprise from the foreign AE."

9. Similarly, in Swarovski India Pvt. Ltd. v. ACIT, ITA No. 5621/Del/2014, the ITAT held:

"Adverting to the facts of the instant case, we find that the assessee purchased Crystal goods and Crystal components from its AE. No value addition was made to such imports. The goods were sold as such. In the given circumstances, the RPM is the most appropriate method for determining the ALP of the international transaction of' Import of Crystal goods and Crystal components."

10. A similar view has been adopted by the Mumbai bench of the ITAT in Mattel Toys v. Deputy Commissioner of Income Tax, (2013) 158 TTJ (Mum) 461:

"Thus, the RPM method identifies the price at which the product purchased from the A.E. is resold to a unrelated party. Such price is reduced by normal gross profit margin i.e., the gross profit margin accruing in a comparable controlled transaction on resale of same or similar property or services. The RPM is mostly applied in a situation in which the reseller purchases tangible property or obtain services from an A.E. and reseller does not physically alter the tangible goods and services or use any intangible assets to add substantial value to the property or services i.e., resale is made without any value addition having been made."

11. This view has also been affirmed by the Bombay High Court in its judgment dated 07.11.2014 in Commissioner of Income Tax v. L'Oreal India Pvt. Ltd. (ITA No. 1046 of 2012), where the Court found that there was no error in law committed by the ITAT when it held that RPM was the Most Appropriate Method in case of distribution or marketing activities especially when goods are purchased from associated entities and there are sales effected to unrelated parties without any further processing. In fact, a Division Bench of this Court in its decision in Bausch & Lomb Eyecare (India) Pvt. Ltd. v. Additional Commissioner of Income Tax, (2016) 381 ITR 227 (Del), while considering the decision of this Court in Sony Ericsson Mobile Communications India Pvt. Ltd. v. Commissioner of Income Tax, (2015) 374 ITR 118 (Del), noted that:

"The RP Method loses its accuracy and reliability where the reseller adds substantially to the value of the product or the goods are further processed or incorporated into a more sophisticated product or when the product/service is transformed."

12. Therefore, a contrario, when the reseller does not add any value to the product of the goods, the RP method would be appropriate for determining the arms' length price.

18. In respect of the observations of the Ld. DRP that the assessee has incurred substantial AMP, and other expenses, in relation to its turnover, and is therefore, not a simple distributor in terms of the requirement of using RPM, Ld. AR has rightly placed reliance on the decision reported in Nokia India Private Limited vs. DCIT (2015) 153 ITD 508 (Delhitrib.) wherein it was held that the incurring of high advertisement and marketing expenses by the assessee vis-avis the other comparable companies does not in any manner affect the determination of ALP under the RPM. In the above decision it was held that, -

The ld. DR vehemently argued against the application of RPM in the given circumstances as the most appropriate method by contending that the assessee incurred huge advertisement and marketing expenses. In view of such incurring of expenses, the ld. DR stated that the better course would be to apply TNMM which would consider operating profit. We are unable to accept the contention advanced on behalf of the Revenue. The obvious reason for this is that the incurring of high advertisement and marketing expenses by the assessee vis-a-vis the other comparable companies does not in any manner affect the determination of ALP under the RPM. When we consider gross profit in numerator and net sales in denominator, all the expenses debited to the Profit & loss account automatically stand excluded. It is but natural that only those expenses can have bearing on the gross profit that are debited to the Trading account. As the amount of advertisement and marketing expenses falls 'below the line' and finds its place in the Profit and loss account, the higher or lower spend on it cannot affect the amount of gross profit and the resultant ALP under the RPM. If the assessee has incurred more expenses on advertisement and promotion, which, in the opinion of the ld. DR went on to brand building for an AE, then, the transfer pricing adjustment on account of such AMP expenses was separately called for. Since the TPO has not made any separate adjustment on account of AMP expenses and has given effect to the same under TNMM, we hold that the incurring of such higher advertisement and marketing spend would not affect the calculation of ALP under

the RPM. Ex consequenti, we hold that RPM prima facie appears to be the most appropriate method in the facts and circumstances of the instant case.

19. The above decisions clinch the issue involved in this matter and squarely applicable to the facts of the case. We, therefore, while respectfully following the same hold that the RPM is the most appropriate method in the facts and circumstances of this case and accordingly direct the Ld. TPO to adopt the RPM as the most appropriate method for benchmarking the international transaction".

7.3.ii. The facts prevailing in the instant case are also that the assessee is the distributor of men's wear imported from its AE. It does not carry out any value addition. Though the assessee is alleged to have incurred huge expenses on advertisement and market promotion, the same would not increase the inherent value of the products. In the case of simple distribution of products, it has been consistently held in the above said case laws that the "Resale Price method" (RPM) is the most appropriate method. Under the RPM, the profits are compared at Gross Margin level, in which case, the expenses incurred on Advertisement and Marketing should not be deducted while arriving at the Gross profit margin. Hence the TNMM method adopted by the assessee as well as the TPO is not appropriate method. Since the T.P study requires to be carried out afresh by adopting "RPM", we set aside the order passed by the AO on this issue and restore the same to his file for examining this issue afresh."

6. The learned Departmental Representative ("*learned DR*") could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of the Tribunal in assessee's own case cited supra, the contention of the assessee in applying RPM as the most appropriate method is upheld. Accordingly, the order passed by the TPO/AO on this issue is set aside and the TPO/AO is directed to *de novo* benchmark the international transaction pertaining to '*import of men's wear for resale*' by applying RPM as the most appropriate method. As a result, ground no.1, raised in assessee's appeal is allowed for statistical purposes.

7. The issue arising in ground No.2, raised in assessee's appeal, is pertaining to addition under section 69C of the Act by treating loans and advances as '*unexplained'*.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee was asked to furnish the confirmation from the parties along with documentary evidence to substantiate the claim of loans/advances appearing in the balance sheet as

on 31/03/2017. In response thereto, the assessee provided the names of a few parties against whom loans/advances are shown and claimed the same to be towards security deposits. In the absence of confirmation from the parties and documentary evidence in support of loans/advances, the AO vide draft assessment order held that the assessee has failed to prove the genuineness and creditworthiness of the parties against whom the loans/advances are shown in its balance sheet. Accordingly, the AO, vide draft assessment order, proposed to make an addition of Rs.1,31,02,653, being the amount shown towards loans/advances during the year under consideration as '*unexplained'*.

9. The learned DRP, vide its directions, held that the proposed addition is not called for, however, directed the AO to make certain verifications, such as advances have been made through banking channels, advances are recorded in the books of accounts and the details are reconciled with the increasing advances during the year. The relevant directions of the learned DRP are reproduced as under:-

> *"Directions of the DRP*
>
> *10.1 The panel has considered the submissions made by the assessee. During the course of hearing before the DRP the assessee had filed additional evidence in form of rent agreements with parties on sample basis to whom advances have been made towards security deposits for store, warehouse and offices taken on rent by the assessee forehead business use. The additional evidence was forwarded to the assessing officer using the relevant module of ITBA, for examination and comments on merits. However, till the date of issuing these directions no response has been received from the AQ.*
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> *10.2 The Panel notes that the assessing officer has proposed addition of advances made by the assessee which are duly recorded in the books of accounts, and reflected in the balance sheet of the assessee. The AO has not clarified that under which section of the Income Tax Act, the said addition is proposed to be made. This obviously cannot be made under section 68 of the Act as it is not a credit appearing in the books of accounts. Similarly, it cannot be made under section 69 as the advance made is recorded in the books of accounts. It is claimed by the assessee that the advances are towards a security deposits of various stores, warehouse and offices taken on rent by the assessee for its business use. The assessee has also provided details of advances given during AY 2017-18 wherein vendor name, PAN No.. additions made during the year etc. are mentioned. As additional evidence the assessee has filed copies of rental agreement in respect of parties to whom major advances have been made.*
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> *10.3 In view of the above, the panel is of the opinion that the proposed addition is not called for. However, the assessing officer should verify that*

advances have been made by the assessee through banking channels and are properly recorded in the books of accounts and the details are reconciled with the increasing advances during the year. Accordingly, objection No. 6 of the assessee is allowed, subject to verification by the AO."

10. In conformity with the learned DRP's directions, the AO issued a letter to the assessee asking to submit rental agreements, ledger account copies of the aforesaid parties in assessee's books of accounts, and bank account statements highlighting the loans and advances given to the parties. In response thereto, the assessee provided the name of the parties along with their PAN No., amount of advance, date of advance, mode of payment, the rental agreement, and extract of bank statement evidencing payment. The AO, vide impugned final assessment order, did not agree with the submissions of the assessee and held that the amount of advances/loan does not reconcile with the supporting ledger extract of each party as appearing in assessee's books and the assessee has also not produced the confirmation letter from the parties who have received the said advances. Accordingly, the AO, vide impugned final assessment order, treated the advances amounting to Rs.1,31,02,653, as '*unexplained'* and disallowed the same under section 69C of the Act. Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that in order to substantiate its claim that the amount shown as loans/advances in its books are towards security deposits to various parties for stores, warehouse, and office taken on rent, the assessee filed additional evidence in the form of rent agreement with various parties on a sample basis before the learned DRP. Further, it cannot be disputed that the additional evidence filed by the assessee was forwarded by the learned DRP to the AO for examination and comments on merits. However, as noted in the learned DRP's directions, till the date of issuing the directions no response was received from the AO. As noted above, the learned DRP agreed with the submission of the assessee and held that the proposed addition is not called for either under section 68, as no credit is appearing in the books of accounts of the assessee, or under section 69, as the advances have been duly recorded in the books of accounts.

However, the learned DRP directed the AO to verify certain aspects. At this stage, it is relevant to note the provisions of section 144C(8) of the Act, which reads as under:-

> *"(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order."*

12. Therefore, as per section 144C(8) of the Act, the DRP can confirm, reduce, or enhance the variation(s) proposed in the draft assessment order, while issuing the directions under section 144C(5) of the Act. However, the DRP is not empowered to set aside any proposed variation or issue any direction for further enquiry and passing the assessment order, as was done in the present case. Therefore, we are of the considered view that the various directions issued by the learned DRP in para 10.3 of its order in respect of verification on various aspects are completely contrary to the provisions of section 144C(8) of the Act and the final assessment order passed by the AO in conformity with these directions on this issue are not legally sustainable. Accordingly, the addition made by the AO pursuant to the directions of the learned DRP on this issue is deleted. As a result, ground no.2.4, raised in assessee's appeal is allowed. Since the relief has been granted to the assessee on this short issue, the other issues raised in ground no.2, are rendered academic and therefore, are left open.

13. The issue arising in ground no.3, raised in assessee's appeal, is pertaining to treating the outstanding balance of sundry creditors as '*unexplained'* and taxing the same as income under section 115BBE of the Act.

14. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has shown an amount of Rs.15,46,19,525, towards sundry creditors. Accordingly, the assessee was asked to furnish the details of sundry creditors along with the confirmation supported by documentary evidence to prove the genuineness and creditworthiness of the creditors. In the absence of any response from the assessee, the AO vide draft assessment order treated the

amount shown towards sundry creditors as '*unexplained'* and proposed to add the same to the total income of the assessee at a special rate under section 115BBE of the Act.

15. The learned DRP, vide its directions, held that the addition proposed by the AO is not justified. However, directed the AO to verify that the addition to creditors is on account of trade creditors and the character of royalty. The learned DRP further directed the AO to verify the reconciliation given by the assessee in respect of confirmation from 12 parties produced during the hearing before the DRP. The relevant directions of the learned DRP are reproduced as under:-

> *"12. Directions of the DRP*
>
> *12.1 The panel has considered the submissions made by the assessee. During the course of hearing before the DRP the assessee had filed additional evidence in form confirmation from creditors on sample basis. The additional evidence was forwarded lo Assessing officer using the relevant module of ITBA, for examination and comments on merits. However, till the date of issuing these directions no response has been received from the AO.*
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> *12.2 The panel notes that as per the assessee the sundry creditors as on 31 March 2017 are for purchases made by the assessee and royalty transaction with its AE. As stated by the assessee the transactions of purchase and also transaction of royalty with AE are recorded in the books of accounts. The panel, in principle, agrees with the assessee that if the original transactions have been accepted then there is no reason to disallow the credit balance appearing at the end of the year in respective accounts on account of transactions undertaken during the year. The assessee, in form of additional evidence has furnished confirmation from 12 parties and has given reconciliation of their credit balance in its books of account. The panel has perused the additional evidence and it is seen that the transactions are in respect of purchases made by the assessee and also on account of payment of royalty to Lelio International SA.*
>
> *12.3 thus the panel is of the opinion that the additions proposed not justified. However, the AO should verify the addition to creditors are or account of trade creditors and character for royalty. The AO should also verify the reconciliation given by the assessee in respect of confirmation from 12 parties produced by 8 during the course of hearing before the DRP. Accordingly, objection No. 7 of the assessee is allowed. subject to verification by the AO."*

16. In conformity with the learned DRP's directions, the AO issued letter asking for the following information from the assessee:-

> *"Information/document required: Please furnish information of sundry creditors of Rs.15,46,19,525/- as on 31st March, 2017 and also in respect of those*

accounts which have been squared off during the financial year 2016-17 in a tabular form as per Annexure-II enclosed to this letter. You are also requested to furnish ledger account copies of the said parties in your books of account & confirmation letters from the sundry creditors and also your ledger account as appearing in their books of account. Please furnish the details of credit purchases and clarify whether the addition to sundry creditor is on account of trade creditor or the transaction is in the nature of royalty."

17. After perusal of the details filed by the assessee, as noted in para 4.3-4.4 of the final assessment order, the AO came to the conclusion that out of total sundry creditors of Rs.15,46,19,525, the assessee has explained sundry creditors of Rs.7,42,08,884, with supporting documentary evidence and the same is reconciled. It was further held that in respect of the remaining sundry creditors of Rs.8,04,10,641, the assessee has not submitted any documentary evidence like ledger accounts, confirmation letter, and reconciliation statements, and therefore, genuineness and creditworthiness of the same is not proved, thus remains '*unexplained'*. Accordingly, vide final assessment order, the AO treated the expenditure for sundry creditors of Rs.8,04,10,641, as '*unexplained'* and disallowed the same under section 69C of the Act. Being aggrieved, the assessee is in appeal before us.

18. Having considered the submissions of both sides and perused the material available on record, we find that in respect of this issue also the learned DRP issued directions to the AO to verify certain aspects as noted in para 12.3 of its directions, which are contrary to the provisions of section 144C(8) of the Act as the same specifically prohibits issuing any direction for further enquiry. Therefore, we are of the considered view that these directions and the final assessment order passed by the AO in conformity with the same on this issue are not legally sustainable. Accordingly, the addition made by the AO pursuant to the directions of the learned DRP on this issue is deleted. As a result, ground no.3.5, raised in assessee's appeal is allowed. Since the relief has been granted to the assessee on this short issue, the other issues raised in ground no.3, are rendered academic and therefore are left open.

19. Ground No.4, raised in assessee's appeal is pertaining to the initiation of penalty proceedings, which is premature in nature. Therefore, the same is dismissed.

20. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 08/09/2023

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 08/09/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai